



Assessments Q&A's

Q. What is an assessment? Is it a fine or a penalty for violating the law?

An assessment is a civil penalty that is proposed by the Secretary of Labor (or MSHA's Assessments Office) to be paid by a mine operator, an independent contractor working on mine property, an agent of a corporate mine operator or independent contractor, or in the case of smoking, an individual miner, for a violation of the Mine Safety and Health Act or the mandatory health and safety standards. The Mine Act requires that all violations of the Mine Act or the regulations are to be given such an assessment. If a mine operator or other person receiving an assessment wishes, he or she may pay the assessment or contest their assessment before a judge of the Federal Mine Safety and Health Review Commission. If a proposed assessment is not contested it becomes a final order of the Commission by operation of law. If a proposed assessment is contested, a de novo final order of assessment will be issued by the Federal Mine Safety and Health Review Commission, a separate agency.

Q. How much can a violation be assessed and how is the amount of the assessment determined?

The amount of a civil penalty currently ranges from \$60 to \$60,000. The figure of \$60,000 is fixed by the Mine Act. The penalty structure is now covered by 30 C.F.R. Part 100. Although MSHA will initiate rulemaking to raise the level of penalties (See [Press Release](#)), the current system of assessment is divided into "single penalty assessments", "regular assessments" and "special assessments".

The current single penalty assessment is a flat \$60 and can only be imposed on a 104(a) non-Significant and Substantial (S&S) citation that is timely abated and that occurs at a mine that does not have an excessive history of violations.

The regular assessment is imposed for most orders, S&S citations, and 104(a) non-S&S citations that are not timely abated or that occur at a mine with an excessive violation history. Regular assessments are based on penalty points assigned for each of the Mine Act's assessment criteria (history, size, negligence, gravity, and good faith) according to point tables in 30 CFR Part 100 and then converted to a dollar amount using the penalty conversion table, also in 30 CFR Part 100.



Assessments Q&A's

Special assessments are reserved for those violations that are of such a nature or seriousness that an effective penalty can not be derived by either the single penalty or regular assessment method. Under 30 CFR 100.5, special assessment must be considered for certain types of violations. Special assessment is not mandatory for any type of violation. However, all violations in the following categories must be reviewed by Enforcement personnel for special assessment:

- 1) fatalities and serious injuries
- 2) unwarrantable failure to comply
- 3) operation of a mine in defiance of a closure order
- 4) denial of right of entry
- 5) individuals who are personally liable under section 110(c) of the Mine Act
- 6) imminent danger
- 7) acts of discrimination under section 105(c) of the Mine Act
- 8) extraordinarily high negligence or gravity or other unique aggravating circumstances*

*An unacceptable level of repeat health standard violations is considered a unique aggravating circumstance. Other examples include failure to report under Part 50 and violations involving untrained miners.

Special assessments are individually determined by a staff of mine safety and health specialists (assessors) who apply each of the six assessment criteria to the facts and circumstances surrounding each violation. The special assessment review includes an analysis of the violation and related documents (Special Assessment Review Form, conference notes, inspector's notes, accident report, sketches/photographs, and relevant portions of plans). The review may also include discussions with both headquarters and field personnel and the Office of the Solicitor. Violations considered for "high dollar" assessment (those over \$10,000) are subject to a Joint Review Committee (JRC) conference involving all relevant MSHA officials and attorneys from the Solicitor's Office. Upon concurrence of all parties, the case is presented to the Assistant Secretary for final approval.

Q. If a mine gets too many fines (assessments), will it be closed?

There is no direct relation between the number of assessments a mine has received and closure of the mine. The Mine Act does not contain any provisions allowing MSHA to close a mine because it has received too many penalties. The Mine Act does, however, allow for increasingly severe penalty assessments for repeated and widespread violations because of the higher level of negligence involved. Also a chain of such violations can



Assessments Q&A's

trigger an unwarrantable failure withdrawal order which could result in the closure of parts of a mine which are affected by such violations.

Q. How long do mine owners/operators have to pay the fines?

Mine operators, contractors and agents, have 30 days from receipt of a civil penalty to either pay or contest the penalty. A mine operator who contests the penalty before a Judge of the Federal Mine Safety and Health review Commission generally has 30 days to pay the civil penalties.

Q. What happens if a mine owner refuses or is unable to pay a civil penalty?

Failure to pay a civil penalty causes the provisions of the Debt Collection Improvement Act of 1996 and its regulations to go into effect. Once a civil penalty becomes a Final Order of the Commission (FORD), MSHA makes demands for payment. Office of Assessments personnel make phone calls, contact MSHA districts and State Corporation Commissions to obtain pertinent collection information on the debtor. Multiple attempts are usually made by phone and/or in writing to contact the debtor. Thirty days after the debt becomes a FORD, 8% Mine Act interest begins to accrue. If the debt remains unpaid for 90 days, a non-payment penalty of 6% annually begins to accrue retroactively to the FORD date. MSHA can refer delinquent debt that is 180 days old to the Department of the Treasury for further collections effort. Treasury may refer the debt to a private collection agency or ultimately to the Department of Justice for collection. In these cases, additional fees are added to the debt by each department involved.

Some debtors can't be located, are out of business or are financially unable to pay. In these cases where the debt is less than \$100,000, MSHA may suspend or terminate collection activity, and can write the debt off as uncollectible and file I.R.S. Form 1099-C (Earned Income) with the Department of Treasury. This adds the amount of the penalty to the taxable income of the debtor, raising the taxes owed by the company.

Where the operator is unable to pay the total debt owed, MSHA may waive the interest and the operator can make a lump-sum payment of the principal amount. MSHA may also offer the debtor the option of being placed on an installment plan not to exceed sixty months.

Q. Can a mine be closed for nonpayment of fines?

MSHA has the authority to require payment of civil penalties under Section 108 of the Mine Act and may ask a Federal Court Judge to order payment of penalties subject to contempt for failure to comply with court order. The Mine Act



Assessments Q&A's

does not give MSHA the direct authority to close a mine because civil penalties have not been paid.

Q. If the mine owner thinks the penalty is too high, can s/he appeal? How does that process work?

When a mine operator receives a civil penalty and s/he believes that there was no violation of law or the penalty is too high, s/he can contest the penalty within 30 days of the issuance of the assessment. If the penalty assessment is contested, the matter is referred to an Administrative Law Judge of the Federal Mine Safety and Health Review Commission who will have the authority to decrease or increase the penalty. The decision of the Judge may be appealed to the full Federal Mine Safety and Health Review Commission and then to the federal Circuit Courts of Appeals.

Q. How is an operator's ability to stay in business considered in the assessment process?

The operator's ability to stay in business if a certain penalty assessment is made is not considered when a civil penalty is being determined. However, if a mine operator believes that a high penalty would affect his or her ability to continue in business, s/he can submit financial information to the District Manager under 30 CFR Part 100. If the information provided by the operator indicates that the penalty will adversely affect the operator's ability to continue in business, the Office of Assessment has the authority to adjust the penalty amount.

Q. Can a mine owner appeal the citation, the amount of the fine or both?

The owner can appeal both.

Q. Who makes the final decision on a fine?

If a civil penalty is not contested or paid within 30 days of receipt by the mine operator, it becomes a final order of the Commission. If contested, a civil penalty can be reduced, increased, or vacated by Commission ALJs. Mine operators may also appeal a Commission decision to a Court of Appeals which could make similar adjustments to a penalty.

Q. What are the minimum and maximum amounts a company can be fined for each violation?

Currently, the minimum penalty is \$60; the maximum is \$60,000. MSHA has initiated rulemaking to raise those amounts.



Assessments Q&A's

Q. Who determines what amount the penalties are for each company and violation?

MSHA's Office of Assessments determines all civil penalty assessments using the five criteria from the assessment regulations in 30 CFR Part 100 (see #2 above). The size and history figures are ultimately attributable to the mine operator, and the negligence, gravity, and good faith criteria are taken from the issuing inspector's evaluation of each violation.

Q. What is the percentage of fines paid?

The overwhelming majority of assessed civil penalties are paid. For the 10-year period ending in September 2005, MSHA assessed over 1.1 million citations and orders for a total of almost \$200 million dollars in civil penalties. Nearly \$158 million dollars, or 80%, of those penalties have been paid.

Q. What is a "special" assessment?

A special assessment is appropriate when an evaluation of the facts surrounding a violation concludes that a single penalty or regular formula assessment would not be an adequate deterrent. Special assessments are reserved for the most serious violations; for example, those related to a fatal or serious injury accident, violations involving an unwarrantable failure to comply with standards or regulations, operating a mine in defiance of a closure order, denial of entry to an inspector. Special assessments are manually determined, as opposed to being computer-generated, after a review of all relevant information pertaining to a violation.

Q. How are special assessments determined?

Most special assessments are determined using a set of guidelines that increase the regular assessment penalty point values for each of the five assessment criteria and convert the total to a penalty amount using an adjusted penalty table. The assessor may then adjust the resultant penalty, within limits, to account for specific facts and circumstances surrounding each violation.

In rare instances, these guidelines are not used, and the penalty amount is determined solely by the assessor. However, the five criteria must still be considered and the basis for the penalty is thoroughly documented in the "Narrative Findings for a Special Assessment" provided to the operator.



Assessments Q&A's

Q. When and why were the special assessment guidelines developed?

The guidelines were developed in 2003. The purpose of the guidelines is to help MSHA propose more consistent penalties for similar violations, while allowing the assessor some flexibility to adjust the penalty for specific circumstances, if warranted. The guidelines also clarify for mine operators and other interested parties MSHA's basis for proposed special assessments.

Q. What percentage of violations assessed get the \$60 single penalty assessment?

During the last several years, approximately 65% of violations received a single penalty assessment. Approximately 33% received regular assessments, and the remaining 2 – 3% received special assessments.

Q. How often has the daily penalty assessment been utilized, and why is it not utilized more?

During the last ten years, nearly 99% of the violations cited and assessed by MSHA were corrected within the period permitted for their correction and therefore would not meet the requirement for a daily penalty assessment.

Q. Are high dollar fines (fines over \$10,000) increasing or decreasing?

MSHA records show from CY2001 to 2005, the number of high-dollar final assessments imposed on all mine operators was 21 percent higher than during the period of 1996-2000. The total dollar value was up by 16 percent during this same period of time. This increase in high dollar assessments occurred while the total number of mines decreased by 8% between 2000 and 2005.

Q. What is the percentage of assessed violations that are contested each year?

Approximately six percent of assessed citations and orders are contested each year.

Q. What is the impact of litigation on contested proposed assessments?

For the period 1996 – 2005, roughly 6% of all proposed assessments issued by MSHA were contested each year and 2.5% of all assessments issued were reduced as a result of litigation.



The Mine Safety and Health Administration (MSHA)

Assessments Q&A's

Q. What are the numbers of 110(c) cases initiated and Section 105(c) complaints filed, broken down by fiscal year?

Answer:

Case Type	2006 (to date)	2005	2004	2003	2002	2001	2000
105 Coal	11	56	53	86	97	87	92
105 MNM	19	69	65	83	88	91	120
110 Coal	15	145	162	155	150	185	179
110 MNM	38	178	175	135	114	170	204